

IN THE HIGH COURT OF GUJARAT
AT AHMEDABAD

Date of decision: 14th November 1995

CRIMINAL APPEAL NO.514 OF 1987

THE HONOURABLE MR. JUSTICE A.N.DIVECHA

AND

THE HONOURABLE MR. JUSTICE H.R.SHELAT

Shri H.M.Chinoy, Advocate, for the Appellant.

Shri S.R.Divetia, Additional Public Prosecutor, for the
Respondent.

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1. Whether Reporters of Local Papers may
be allowed to see the judgment?
2. To be referred to the reporter or
not?
3. Whether their Lordships wish to see
the fair copy of judgment?
4. Whether this case involved a
substantial question of law as to the
interpretation of the Constitution of
India, 1950 or any order made

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5. Whether it is to be circulated to the
Civil Judge?

Coram: A.N.Divecha & H.R.Shelat, JJ.

(14th November 1995)

Oral Judgment: (Per H.R.Shelat, J.)

The accused having been convicted of the offence under section 302 of the Indian Penal Code, 1860 (the IPC for brief) and sentenced to life imprisonment by the judgment and order passed by the then Sessions Judge of Bharuch on deputation at Rajpipla in Sessions Case No.87 of 1986 has preferred this appeal.

2. In short, it is the case of the prosecution that Chimanbhai Chhitabhai Tadvhi residing at Amdala in Nandod taluka was on 15th April 1986 in the morning at his place. His wife Savitaben, his mother Vaniben and his father Chhitabhai were also in the house. At 9.00 a.m. the appellant went to his place and informed that he killed his wife Shantu and also his sister Reva by giving dharia blows. The dead body of his wife was lying on the bank of the river where his field is situated and the dead body of his sister was lying at his place. He also stated that he had thrown the dharia on the bank of the river. Thereafter, Chimanbhai Chhitabhai taking Ganpatbhai and Lallu Naranbhai with him went to the place of incident. He could see Revaben in the house. She was seriously injured. Her left hand was cut off and was also injured on her head. Chimanbhai Chhitabhai made inquiries to which Revaben replied that her brother appellant have been to her in the morning when she was in the shop and that she was beaten by a dharia by the appellant. Thereafter, she died. All the three then went to the river bank where they found the dead body of Bai Shantu. Her hand was cut off. She had sustained injuries on her head and neck. Again, they went to the appellant and questioned what had happened. The appellant stated that on 14th April 1986 he had gone to take the idol of Mataji and he was doing certain agricultural operations in the field and was also keeping a watch on the crops. In the noon when he returned he found that his wife had not attended the work assigned to her and therefore he was annoyed. He reprimanded her, but he was upset of the same. On the next day morning, his wife quarrelled with him as she wanted to go to her natal house. The appellant was not willing to permit her to go to her natal house as certain work in the field was pending which was to be attended first. But Bai Shantu persisted and therefore the appellant lost his temper and taking a dharia he gave three-four blows on her head, hand, shoulder, neck etc. as a result Bai Shantu sustained fatal injuries. Bai Reva who also lost her life was his sister. About eight years back, the appellant had advanced Rs.2500/- to Revaben but she was

not paying the same back. He therefore went to the shop where Reva was available. Going there, he gave dharia blows as a result Bai Reva sustained fatal injuries and died after some time. Chimanbhai Chhitabhai then went to the Police Station at Kevadia Colony and lodged his complaint. The Police Officer carried out the investigation as per law and filed the charge-sheet against the appellant in the Court of the Judicial Magistrate, First Class at Rajpipla. The learned Magistrate committed the case to the Court of Sessions at Bharuch for hearing and disposal in accordance with law. The Additional Sessions Judge was holding a seat on deputation at Rajpipla. The matter was transferred to Rajpipla. The case was registered as Sessions Case No.87 of 1986. The appellant pleaded not guilty when charge was framed against him. The charge was read over and explained to him. The prosecution then adduced the necessary evidence. Appreciating the evidence on record, the learned Additional Sessions Judge on deputation at Rajpipla held the appellant guilty and convicted as stated hereinabove. The present appeal is therefore filed before us challenging the conviction and sentence inflicted.

3. Shri Chinoy, learned Advocate representing the appellant, submitted how the learned Judge committed several errors in appreciating the evidence and concluding against the appellant. But after query from us, he confined his submission to the confession made by deceased Revaben. Shri Chinoy, learned Advocate, took us to the evidence on record and submitted how the case on hand was requiring our interference. He assailed the evidence about the confession made by the appellant. When before us only the evidence with regard to the confession and the statement made by Revaben are confined to, we would deal with those submissions alone and would not come between us other submissions which were later on not pressed.

4. The evidence of Chimanbhai Chhitabhai is recorded at Exh.19. Of course, he later on turned hostile. But his evidence which is relevant to an extent cannot be lost sight of. He has admitted that he lodged the complaint at Exh.29. The same was read over to him and he also admitted before the Court that the contents thereof were true and he signed the complaint after reading over the same and finding that no false statement was made and whatever he stated was recorded. In the FIR at Exh.29, he has clearly mentioned about the confession made by the appellant. According to him, the appellant went to his place in the morning and in clear terms has

stated that he killed by a dharia his wife in the field and then going to the shop by giving dharia blows he also killed his sister Revaben. He also made it clear where the dead bodies would be found mentioning that the dead body of his wife was lying on the bank of the river and the body of his sister was lying at home. Chimanbhai Chhitabhai then went to both the places and found the dead body of the appellant's wife, but dead body of Revaben was not there at that time. Revaben was alive and therefore he made query. Revaben made very clear that her brother assaulted her with a dharia causing serious injuries and then she died. It seems, later on, Chimanbhai Chhitabhai, his father, thought to save the appellant from being convicted. He before the Court made a shrewd statement about the confession of the appellant, but could not conceal the truth because of the complaint he lodged and when pointed out to him for the purpose of confrontation. Chittabhai Bhagubhai and Savitaben Chimanbhai were also present when the appellant confessed about the wrong he made before Chimanbhai Chittabhai. They have also shrewdly made a statement so that the appellant may get the benefit of doubt. But they have stated that the appellant did make the statement about the murder he committed remaining silent about whose murder he committed. These two witnesses and Chimanbhai Chhitabhai to a greater extent do support the case of the prosecution. The prosecution rightly did not resist the contents of the evidence of these three witnesses. Ramabhai Chhitubhai was examined at Exh.22. He also questioned the appellant who is his sister's son after the appellant's father informed about the incident and he knew from the words of his mouth that the appellant was the wrongdoer. The appellant replied that he killed his wife Shantu and also his sister Reva by giving dharia blows. Ramabhai Chhitubhai even in the grilling cross-examination stood firm and maintained what he stated in the examination-in-chief. We peruse his evidence along with the other evidence on record with meticulous care and we find that his evidence is trust-worthy and credible leaving no room for any doubt. We are therefore of the view that the learned Judge was perfectly right in placing reliance on the evidence of Ramabhai Chhitubhai and, on the basis of that evidence, the fact of confession was proved and on the basis of that confessions the appellant has rightly been convicted and sentenced. Ramabhai Chhitubhai does not have any hostility with the accused. He does not have any reason to falsely rope in the case. On perusal of record and especially the evidence of Ramabhai Chhitubhai, we find nothing going to show that the confessional statement was made because of any inducement or threat or promise or

any coercion and the like. By free will the same has been made and therefore it requires to be acted upon. In short, the confession made before Ramabhai Chhitubhai and others is voluntary. When that is so, we find no justification to interfere with the findings and conclusions drawn by the learned Judge.

5. Shri Chinoy, learned Advocate representing the appellant, could not point out any infirmity in the evidence of the prosecution with regard to the confession and also the statement made by deceased Revaben.

6. On behalf of the appellant, we were requested to show leniency. Here is a case of brutal and ghastly double murder. The atrocities on women in the society are increasing and safety of women is jeopardised either at home or outside home. Such events disturb the social set up and lead the society from civilization to barbarism and therefore such events should be frowned upon and no leniency should be shown. The sentence inflicted is proper and requires no interference.

7. The result is, the appeal requires to be rejected and we accordingly dismiss the appeal and maintain the judgment and order of conviction passed by the lower Court.

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